IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.756/2004

Jitendra alias Jito S/o Thano alias Thansingh
Versus
The State of Rajasthan through the PP

Date of Judgment :::: 10th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Biri Singh with
Shri Harendra Singh and
Shri Kartar Singh Faujdar, Counsel for accused-appellant
Shri B.N. Sandu, P.P., for the State

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By the Court:-

The matter has come-up for orders on the second application for suspension of sentence of the accused-appellant on the ground that the appellant has already remained in jail for about three-and-half-year, but, during the course of arguments, the learned counsel for the appellant contended that final arguments in the appeal itself may be heard and the appeal may be disposed of. With the consent of the learned counsel for both the parties, final arguments in the appeal were heard and the same is being disposed of.

Accused-appellant Jitendra @ Jito S/o Thano @ Thansingh has preferred this appeal challenging the judgment and order of his conviction and sentence dated 7.7.2004 passed by the Additional District &

Sessions Judge (Fast Track) No.4, Bharatpur, in Sessions Case No.4/2002, whereby the accused-appellant has been convicted and sentenced under Section 376, IPC, to undergo 8 years rigorous imprisonment and a fine of Rs.2,000/- (Rupees two thousand); in default of payment of fine, to further undergo two months additional rigorous imprisonment.

The learned counsel for the accused-appellant argued the case on merits but, during the course of arguments, he rightly did not challenge the order of conviction passed by the trial court against the appellant in view of the sole testimony of prosecutrix PW-1 Shila whose statement is trustworthy and further that her statement is corroborated by her injury-report Exhibit P-10 and the statement of Dr. Pramila Sharma (PW-12).

The contention of the learned counsel for the appellant is that the appellant has already remained in jail for about three-and-half-year and the total sentence of imprisonment awarded against him by the trial court is 8 years RI and, therefore, his sentence of imprisonment may be reduced to a period of imprisonment already undergone by him.

The learned counsel for the State supported the judgment of the trial court and contended that there is no merit in the appeal and the same be rejected.

The learned counsel for the appellant has not challenged the order of conviction in view of the statements of PW-1 Shila, the prosecutrix and PW-12 Dr. Pramila Sharma, and the injury-report (Exhibit P-10), and rightly so, therefore, it is not necessary to refer and discuss the facts of the case in detail.

The learned counsel for the appellant contended that this is a case where the brother of the prosecutrix was declared hostile and there is no other evidence to corroborate the statement of the prosecutrix Shila (PW-1), but her statement was found trustworthy by the learned trial court and only on that basis the conviction has been recorded. He contended that it is true that conviction can be based on the sole testimony of the prosecutrix, but, looking to all the facts and circumstances of the case, the sentence of imprisonment awarded by the trial court be reduced to a period of imprisonment already undergone by him.

I have considered the submissions of the learned counsel for the appellant as well as other facts and circumstances of the present case and after considering the same, I am not inclined to reduce the sentence of imprisonment of the appellant to a period of three-and-half-year imprisonment already undergone by him, but I find this case to be a fit one to reduce

the sentence of imprisonment of the appellant from 8 years rigorous imprisonment to 5 years rigorous imprisonment.

Under sub-section (1) of Section 376 IPC the minimum sentence of seven years is prescribed but it is subject to proviso that the court may, for adequate and special reasons, impose a sentence of imprisonment for a term of less than seven years.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

In Ram Kumar Vs. State of Haryana – (2006) 4 SCC 347, their Lordships of the Hon'ble Apex Court reduced the sentence of seven years under Section 376, IPC, to a period of three years imprisonment. Para No.3 of the judgment reads as under:-

> "3. The appellant, aggrieved by the order passed by the High Court has filed the above

> appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both the Sessions Court as well as the judgment passed by the High Court. The learned counsel for the appellant drew our attention to the statement of the girl Bimla (PW-5) and also drew our attention to the evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly."

In the case of State of Chhattisgarh Vs. Lekhram (2006) 5 SCC 736 the Hon'ble Apex Court reduced the minimum sentence under Section 376, IPC, of seven years to a sentence of one-and-half-year imprisonment, already undergone by accused therein.

Para 16 of the judgment reads as under:-

> "16. The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the facts that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the appellant back to prison."

After considering all the facts and

circumstances of the case and the citations of the Hon'ble Apex Court, as referred above, I think it fit and proper to invoke the proviso to Sub-Section (1) of Section 376, IPC, and in my opinion, ends of justice will meet in case the sentence of imprisonment awarded by the trial court under Section 376, IPC, is reduced to a period of sentence of 5 years RI.

Consequently, the appeal of the appellant is partly-allowed. His conviction under Section 376, IPC, is maintained, but his sentence of imprisonment of 8 years RI awarded by the trial court is reduced to a period of 5 years RI and a fine of Rs.2,000/- (Rupees two thousand); in default of payment of fine, to further undergo 2 months additional RI.

(Narendra Kumar Jain) J.

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